



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

LIZANDRO ONOFRE,

Plaintiff,

v.

**JAMES WHITE, individually, and
TED'S CAFE ESCONDIDO
HOLDINGS, INC., a Foreign for Profit
Business Corporation,**

Defendants.

CJ-2017-03391

MARY F. FITZGERALD

Case No. CJ-2017-

DISTRICT COURT
FILED

AUG 25 2017

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

PETITION

COMES NOW, Plaintiff, Lizandro Onofre, and for his Petition against Defendants, James White, individually, and Ted's Cafe Escondido Holdings, Inc., a Foreign for Profit Business Corporation, he alleges and states the following:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is an individual and resident of Tulsa County, Oklahoma.
2. Defendant James White is an individual and resident of Tulsa County, Oklahoma.
3. Defendant Ted's Cafe Escondido Holdings, Inc. is a Foreign for Profit Business Corporation doing business in Tulsa County, Oklahoma.
4. The events giving rise to this litigation occurred in Tulsa County, Oklahoma. This Court has jurisdiction over the subject matter of this action and parties, and venue is proper in Tulsa County, Oklahoma, pursuant to Title 12 Oklahoma Statutes § 137.

FACTUAL BACKGROUND

All paragraphs in Plaintiff's Petition above and below are incorporated by reference as if fully set forth herein.

EXHIBIT 1

[illegible]

5. Plaintiff was previously employed by Defendant Ted's Cafe Escondido Holdings, Inc. at its Tulsa Hills location, specifically located at 7848 S. Olympia Ave., Tulsa, OK 74132.
6. Defendant James White is or was employed as the General Manager of Defendant Ted's Cafe Escondido Holdings, Inc.'s Tulsa Hills location.
7. During the time period of April 2016 through August 2016, Defendant James White engaged in the following conduct at Defendant Ted's Cafe Escondido Holdings, Inc.'s Tulsa Hills location:
 - a. Poked and hooked Plaintiff's anus and genitals in private and in the presence of others;
 - b. Refused to allow Plaintiff to take Plaintiff's prescribed medication;
 - c. Refused to allow Plaintiff to utilize Defendant's handicap parking, despite Plaintiff's handicap status;
 - d. Frequently told Plaintiff, "You're just a Mexican," in private and in the presence of others;
 - e. Refused to allow Plaintiff to take breaks during Plaintiff's shifts;
 - f. Mocked and ridiculed Plaintiff in private and in the presence of others;
 - g. Refused to allow Plaintiff to go home when Plaintiff was ill; and
 - h. Struck Plaintiff's lower back/upper buttocks area, causing Plaintiff intense and excruciating pain.
8. As a result of Defendant James White's conduct, Plaintiff suffered severe mental and physical pain and injury to Plaintiff's body for which Plaintiff has incurred expenses for medical attention.
9. At no point in time did Plaintiff ever consent to Defendant James White's conduct.
10. At all times during the time period referenced above, Defendant James White was acting within the scope of his employment by Defendant Ted's Cafe Escondido Holdings, Inc., and Defendant James White was engaging in work assigned.

COUNTS 1 & 2: ASSAULT AND BATTERY

All paragraphs in Plaintiff's Petition above and below are incorporated by reference as if fully set forth herein.

11. This cause of action is brought pursuant to 12 O.S. § 95(4).
12. During the time period of April 2016 through August 2016, Defendant James White engaged in the following conduct at Defendant Ted's Cafe Escondido Holdings, Inc.'s Tulsa Hills location:
 - a. Poked and hooked Plaintiff's anus and genitals in private and in the presence of others;
 - b. Refused to allow Plaintiff to take Plaintiff's prescribed medication;
 - c. Refused to allow Plaintiff to utilize Defendant's handicap parking, despite Plaintiff's handicap status;
 - d. Frequently told Plaintiff, "You're just a Mexican," in private and in the presence of others;
 - e. Refused to allow Plaintiff to take breaks during Plaintiff's shifts;
 - f. Mocked and ridiculed Plaintiff in private and in the presence of others;
 - g. Refused to allow Plaintiff to go home when Plaintiff was ill; and
 - h. Struck Plaintiff's lower back/upper buttocks area, causing Plaintiff intense and excruciating pain.
13. At no point in time did Plaintiff ever consent to Defendant James White's conduct.
14. As a result of Defendant James White's conduct, Plaintiff suffered severe mental and physical pain and injury to Plaintiff's body for which Plaintiff has incurred expenses for medical attention. Plaintiff also suffered temporary and possibly permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.
15. Defendant James White acted with the intent of making harmful contact with the person of

Plaintiff.

16. Defendant James White's conduct resulted in harmful contact with the person of Plaintiff.
17. Defendant James White acted with the intent of putting Plaintiff in apprehension of harmful contact.
18. Defendant James White's conduct resulted in Plaintiff's apprehension and fear of harmful contact.
19. The assaults and batteries committed by Defendant James White were willful and malicious acts.
20. At all times during the time period referenced above, Defendant James White was acting within the scope of his employment by Defendant Ted's Cafe Escondido Holdings, Inc., and Defendant James White was engaging in work assigned.
21. Accordingly, Plaintiff demands judgment against Defendants for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

COMPENSATORY DAMAGES SUSTAINED BY PLAINTIFF

The injuries and damages sustained by Plaintiff as a result of Defendants' conduct include but are not limited to the following:

- A. Plaintiff's physical pain and suffering, past and future;
- B. Plaintiff's mental pain and suffering, past and future;
- C. Plaintiff's age;
- D. Plaintiff's physical condition immediately before and after the incidents;
- E. The nature and extent of Plaintiff's injuries;
- F. Whether the injuries are permanent;
- G. The physical impairment;
- H. The disfigurement;
- I. Loss of [earnings/time];
- J. Impairment of earning capacity;

K. The reasonable expenses of the necessary medical care, treatment, and services, past and future.

Pursuant to the provisions of 12 O.S. §3226(A)(2)(a), Plaintiff submits this preliminary computation of damages sought in this lawsuit. As this is an action for injuries suffered by an adult, Plaintiff advise that all damages recoverable by law are sought, including those listed in OUJ13d 4.1. At this point, Plaintiff does not know the amount of future medical expense. These items are among the elements for the jury to consider in fixing the amount of damages to award to Plaintiff. Other than the amounts which Plaintiff has specifically identified, and which are capable of being ascertained to some degree of certainty, Plaintiff is unable to guess or speculate as to what amount of damages a jury might award.

AMOUNT OF DAMAGES

Plaintiff's injuries and damages are in excess of the amount required for diversity jurisdiction under 28 U.S.C. § 1332 (currently \$75,000.00) plus interest, costs, and all such other and further relief for which should be awarded as judgment against Defendants in an amount to fully and fairly compensate Plaintiff for each and every element of damages that has been suffered, including punitive damages.

DEMAND FOR JURY TRIAL

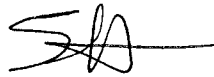
Plaintiff demands a jury trial for all issues of fact presented by this action.

RESERVATION OF ADDITIONAL CLAIMS

Plaintiff reserves the right to plead further upon completion of discovery to state additional claims and to name additional parties to this action.

WHEREFORE, Plaintiff prays for judgment against the Defendants in a sum in excess of the amount required for diversity jurisdiction under 28 U.S.C. § 1332 (currently \$75,000.00) plus interest, costs, punitive damages, and all such other and further relief as to which Plaintiff may be entitled.

Respectfully submitted,



M. Shane Henry, OBA#21520
Fry & Elder
1630 South Main
Tulsa, OK 74119
Telephone: (918) 585-1107
Facsimile: (918) 512-4461
E-mail: shane@fryelder.com
Attorney for Plaintiff

Verification Pursuant to 12 O.S. §426

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

8/25/2017
Dated: _____ in Tulsa, Oklahoma.

DocuSigned by:



Lizandro Onofre, Plaintiff

ATTORNEY LIEN CLAIMED